

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
5:11-MJ-1490-JG-1

UNITED STATES OF AMERICA	)	
	)	
v.	)	<b>ORDER OF DETENTION PENDING</b>
	)	<b>TRIAL</b>
JOSE FABIAN GARCIA-MONTERO,	)	
	)	
Defendant.	)	

This case came before the court on 19 July 2011 for hearing on the government's motion, pursuant to 18 U.S.C. § 3142(f), to detain defendant pending trial.<sup>1</sup> The government presented the testimony of an agent with United States Immigration and Customs Enforcement ("ICE"), and defendant presented no evidence. The court also reviewed the pretrial services report. After careful consideration pursuant to 18 U.S.C. § 3142(g) of the credible information and argument submitted, and based on the findings and reasons stated below and in open court, the court finds by clear and convincing evidence that there is no condition or combination of conditions that will reasonably assure defendant's appearance as required. The government's motion is therefore GRANTED.

**Background**

Defendant was charged by a criminal complaint on 12 July 2011 with the offense of illegal re-entry as an aggravated felon on or about 26 June 2011, in violation of 8 U.S.C. §§ 1326(a) and (b)(2). The evidence presented at the hearing showed that the charges arise from defendant's arrest in Johnston County on traffic charges on the alleged offense date. Investigation established that defendant had been removed from the United States in 2004 after being convicted in that year for indecent liberties with a child. Defendant admitted to authorities that he is a citizen of Mexico who

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<sup>1</sup> With consent of counsel, the detention hearing was combined with the preliminary hearing in this case. Prior to reaching the issue of detention, the court ruled that the government had established probable cause for the charges against defendant.

had been deported after the indecent liberties conviction and that he was illegally in the United States. An ICE detainer is pending against defendant.

### **Discussion**

The law requires that defendant be detained pending trial based on the following principal findings and reasons: evidence showing that the government has a strong case, including the evidence reviewed above; the nature of the offense charged; the circumstances of the offense charged, including the pendency of an ICE detainer against defendant, the substantial prison term defendant faces if convicted, and the prospect of deportation after service of the prison term; defendant's status as a citizen of a foreign country; defendant's criminal record, including three felony convictions and two misdemeanor convictions; and, as indicated, the other findings and reasons stated in open court.

### **Conclusion**

IT IS THEREFORE ORDERED that defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. Defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the government, the person in charge of the corrections facility shall deliver defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

This, the 20th day of July 2011.

  
James E. Gates  
United States Magistrate Judge